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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**
13

14 IceMOS Technology Corporation,

15 *Plaintiff,*

16 v.

17 Omron Corporation,

18 *Defendant.*

CASE NO. 2:17-cv-02575-JAT

FIRST AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

1 parties entered their contract discussed below) to meet regarding their contractual relations.
2 Such meetings occurred in at least 2007, 2011, 2012, 2013, and 2015. The March 2015
3 meeting at which Omron purported to verbally give notice of termination of the IceMOS-
4 Omron Supply Agreement dated February 28, 2011 (“Supply Agreement”) occurred at
5 IceMOS headquarters in Tempe.

6 10. Omron has further directed the following actions toward Arizona—all of
7 which involve the business relationship upon which this lawsuit is based: (1) during the
8 course of Omron’s relationship with IceMOS, Omron has shipped all production and
9 engineering lots it manufactured for IceMOS to IceMOS’s Arizona headquarters; (2) sent all
10 planning requests to IceMOS’s Arizona headquarters; (3) negotiated the Supply Agreement
11 identified below with IceMOS’s business representatives based in Arizona; (4) requested
12 payment from IceMOS’s Arizona headquarters and received payments from IceMOS’s Bank
13 of America Arizona account; (5) directed numerous emails and other correspondence to
14 IceMOS in Arizona relating to the products that are the subject of the Supply Agreement at
15 issue; (6) sent invoices and payment plans to IceMOS in Arizona; (7) called IceMOS
16 president Sam Anderson in Arizona on many occasions to discuss the business relationship
17 at issue.

18 11. Omron has created continuing obligation between itself and IceMOS, a
19 resident of this forum, by voluntarily entering into the Supply Agreement. All items
20 manufactured by Omron under the Supply Agreement were deliverable to IceMOS in
21 Arizona. Further, Omron has traveled to Arizona to meet with IceMOS and has made
22 fraudulent representations and anticipatorily breached its obligations to IceMOS during such
23 meetings.

24 12. IceMOS’s claims arise out of and relate to Omron’s contacts with, and extra-
25 contractual behavior directed to, Arizona. “A defendant has purposely availed himself of the
26 benefits of a forum if he has deliberately engaged in significant activities within a State *or*
27 *has created continuing obligations between himself and residents of the forum.*” Gray &

1 *Co. v. Firstenberg Mach. Co.*, 913 F.2d 758, 760 (9th Cir. 1990) (emphasis added) (internal
2 quotes omitted).

3 13. The Ninth Circuit applies a “but for” test for determining whether a plaintiff’s
4 cause of action arise out of the defendant’s forum-related activities. *Id.* at 761. If Omron had
5 not contracted with IceMOS to manufacture and deliver products to Arizona, IceMOS would
6 not have been injured by Omron’s breach of contract. *See id.* Likewise, if Omron had not
7 traveled to Arizona and made false representations to IceMOS, IceMOS would not have been
8 injured by Omron’s fraud.

9 14. Exercise of jurisdiction over Omron is reasonable because Omron has
10 purposefully availed itself of a contractual relationship with an Arizona citizen by its
11 voluntary dealings with IceMOS. Because Omron is a foreign corporation, the burden of
12 litigating in this forum would not be substantially greater than in any other U.S. forum, nor
13 is there a conflict between this forum’s sovereignty and the sovereignty of another U.S.
14 forum. Arizona has an interest in seeing that its residents are not misled by fraud or harmed
15 by breaches of contract, and Arizona is an efficient forum for litigating this suit because
16 many of the U.S. witnesses are in Arizona. *See id.* (listing factors for reasonableness of
17 personal jurisdiction).

18 15. Venue in this District is proper as to Omron under 28 U.S.C. § 1391(c)(3)
19 because Omron is not a resident of the United States and may, therefore, be sued in any
20 judicial district.

21 **III. FACTUAL BACKGROUND**

22 **A. IceMOS and Omron.**

23 16. Founded in 2004, IceMOS offers and provides high quality super junction
24 metal oxide semiconductor field-effect transistors (“Super Junction MOSFETs”),
25 microelectromechanical systems (“MEMS”) solutions, and advanced engineering substrates.
26 It is a small privately held company with its headquarters in Tempe, Arizona and operations
27 in Belfast, Northern Ireland and Japan.

1 17. Omron is an 86-year old Japanese company founded by Kasuma Tateisi.
2 Omron claims its corporate culture can be summarized by Tateisi's favorite phrase, "Don't
3 just say 'I can't.' Try and find a way to do it." As detailed below, Omron did not apply that
4 spirit to its relationship with IceMOS.

5 18. In 2007, Omron purchased a wafer fabrication facility in Yasu, Japan (the
6 "Yasu Fab") that fabricated 200mm complementary metal-oxide semiconductor (CMOS)
7 wafers with a 50,000 wafer/month capacity. Omron offered contract manufacturing services
8 to utilize extra capacity above what it needed for internal customers and its external
9 expansion. Omron's general manager Yoshio Sekiguchi approached IceMOS and Great Wall
10 Semiconductor (GWS) to be customers of the Yasu Fab. Both IceMOS and GWS ultimately
11 entered supply agreements with Omron.

12 19. When it solicited IceMOS's business, Omron knew IceMOS was a small
13 company with no meaningful ability to shift production facilities from the Yasu Fab and no
14 ability to qualify a second source of production for wafer fabrication simultaneously with
15 designing, engineering, and producing products at Omron's Yasu Fab. Simply stated, Omron
16 knew that it would be IceMOS's sole supplier of wafer fabrication services.

17 20. From 2008 through 2011, IceMOS and Omron had a customer-supplier
18 relationship. During this time, IceMOS began designing and developing its Super Junction
19 MOSFETs for manufacture at the Yasu Fab.

20 21. The sales cycle for microelectronic components like Super Junction MOSFETs
21 is long and complex. IceMOS Super Junction MOSFETs are "designed into" customers' end
22 products (*e.g.* power supplies and light ballasts). The process includes the customer
23 providing functional specifications, size or package requirements and interoperability
24 conditions.

25 22. Because of the detailed selling process, marketing Super Junction MOSFETs
26 requires extensive work with customers. This work is done by sales/application engineers
27 who work closely with the fabrication facility's engineers. The work needed just to start
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1 products into production—design work, application compatibility, fine-tuning with the
2 fabrication facility and customer, creating and adjusting mask sets, producing and qualifying
3 samples, process engineering—takes up to *three years*. IceMOS performs this work for
4 customer devices that have multi-year life cycles. Once IceMOS wins a design battle to have
5 its products included in a device, it must commit to the customer that it can continuously
6 supply the devices for the expected life of the products in which they are used.

7 23. The foundry where semiconductors are manufactured is critical for a
8 semiconductor company like IceMOS. IceMOS's customers will only approve and purchase
9 products produced at fabrication facilities that the customers have qualified for making
10 products for the customers' finished devices. Once a semiconductor company's foundry has
11 been approved by customers, the semiconductor company needs the foundry to continue
12 manufacturing products. This is why, even if the semiconductor company and foundry
13 manifest an intent to cease mutual operations, the semiconductor company needs the foundry
14 to continue supplying products until a new foundry has been located, manufacturing
15 processes transferred, the new foundry proves it can make products with sufficient yields,
16 *and* the customers qualify the new foundry under their own policies and procedures. Thus,
17 withdrawal from a foundry agreement requires the foundry and semiconductor company to
18 work together to ensure the semiconductor's customers obtain the products they need.

19 24. When customers choose IceMOS, they contract for an uninterrupted supply of
20 IceMOS Super Junction MOSFETs for a period that extends continuously into the future for
21 the life of the customer's device. Failure to meet customer demand means that if IceMOS is
22 the first source for the customer's needs, it will be replaced by a second source until it could
23 meet production needs (and if the customer would accept IceMOS products after a supply
24 gap). If IceMOS is the second source of the customer's requirements because it is filling in
25 another supplier's inability to fulfill the customer's orders, and IceMOS has a supply gap, it
26 will simply be replaced by the customer and not used again.

1 25. Supply chain problems are anathema to IceMOS, which serves the power
2 management industry. IceMOS must work with its customers to design and qualify IceMOS
3 products for use in customer systems. One missed shipment or delivery problem can undo
4 thousands of man-hours worth of work to obtain a design win.

5 26. The cycle time for running a production lot of MOSFET wafers exceeds 7
6 months. To order and receive raw materials takes three months, Omron's processing of the
7 raw materials takes another three months, and then IceMOS and Omron need 4-6 weeks to
8 test and assemble the products for the customers. For an engineering lot (which is used for
9 testing and design-in work and creating samples for marketing to customers), the process
10 requires an additional four weeks.

11 27. What IceMOS describes above is the basic nature of how the microelectronics
12 industry works. Omron had actual knowledge of IceMOS's product cycles from design to
13 production when Omron solicited IceMOS in 2007 and when it entered the Supply
14 Agreement. Omron has had extensive consultation and interaction with IceMOS's engineers
15 and principles throughout the decade-long course of the parties' dealings. And Omron has
16 been in the electronics business for nearly a century, therefore it has full knowledge of the
17 nature of IceMOS's products and the Yasu Fab's critical importance to IceMOS's ability to
18 meet its own customer obligations.

19 **B. The Supply Agreement.**

20 28. On February 28, 2011, IceMOS and Omron entered into the Supply Agreement
21 for Omron to fabricate and supply semiconductor wafers for IceMOS's Super Junction
22 MOSFETs. A true and correct copy of said Supply Agreement is attached hereto as "Exhibit
23 1" and is incorporated by reference as if fully set forth herein.

24 29. The intent of the Supply Agreement was to provide IceMOS with a reliable
25 and consistent supply of wafers for its Super Junction MOSFETs to allow IceMOS to
26 develop super junction platforms and meet growing demand by timely delivering products
27 from those platforms to its customers.

1 30. To that end, in the Supply Agreement, Omron agreed to (1) “perform the
2 fabrication requested by IceMOS”; (2) “share equally in the production mask costs (initial
3 sets) applicable to the products listed in Exhibit A and future products”; and (3) “fully
4 resource the development of all generations of Super Junction MOSFETs” through the
5 duration of the Supply Agreement. Supply Agreement, §§ 2.0, 4.0, & 4.2.1.

6 31. From their negotiations of the Supply Agreement, Omron knew that IceMOS
7 depended upon Omron to support IceMOS’s business due to the global dearth of fabrication
8 facilities that could support IceMOS’s manufacturing requirements. IceMOS has developed
9 two generations of Super Junction MOSFETs at the Yasu Fab. While developing these
10 products, IceMOS has created substantial intellectual property, including approximately 50
11 patents.

12 32. IceMOS dedicated a team of Japanese engineers to work with Omron to
13 develop the high voltage Super Junction MOSFET technology, and improve yields in
14 processing—the cost to IceMOS of this engineering capacity was \$600,000 per year.
15 IceMOS further invested in the Omron relationship by purchasing silicon wafers for
16 development and production, and by purchasing mask sets from Omron.

17 33. Because the global availability of fabrication facilities like Omron’s Yasu Fab
18 is so low, and the design-to-production time for IceMOS’s products is long, the Supply
19 Agreement term is 10 years and early termination could only be effectuated upon three years’
20 *written* notice, including one year of support to transfer production to another wafer
21 fabrication facility before termination. The transition year is not separate from the three-year
22 period where production and product development and support continue until termination.
23 The transition work must continue in parallel while Omron continues to fulfill its obligations
24 to make products and support research and development. Supply Agreement §§ 6.0, 6.2.

25 34. To enable Omron to support IceMOS’s contracted-for 3500 wafer/month
26 capacity, IceMOS agreed to purchase a deep reactive ion etcher (DRIE) necessary for Super
27 Junction MOSFET manufacturing, which cost IceMOS \$1,235,666 to purchase and
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1 \$112,000 for installation. IceMOS agreed to pay the expenses necessary to install the DRIE
2 in the Yasu Fab. Supply Agreement § 4.14. The DRIE was configured for use in Japan and
3 IceMOS cannot use it at any facility outside Japan until it is substantially modified. Omron
4 has refused to purchase the DRIE and has refused to help IceMOS to ship it outside Japan.

5 35. Omron further agreed to take all preventive measures necessary to provide
6 continuous supply to IceMOS. Supply Agreement § 4.15, Ex. H.

7 36. It took four years of the 10-year Supply Agreement's term, and tremendous
8 efforts by IceMOS in design, development and engineering, for Omron to finally obtain a
9 75% wafer yield on IceMOS's first generation (GEN1) Super Junction MOSFET products.
10 Even the best manufacturing Omron could achieve resulted in Super Junction MOSFET
11 wafers with 25% of the die on them useless.

12 37. Upon information and belief, in 2015 Omron's new president determined that
13 acquiring the Yasu Fab was a mistake. Despite its long-term contracts with GWS and
14 IceMOS, Omron now wanted to exit the contract manufacturing business and redirect the
15 engineers and capacity to Omron's internal customers.

16 38. The Supply Agreement requires that all notices under the agreement "be in
17 writing and delivered personally or via facsimile or via registered or certified mail" to the
18 party's address listed in the agreement. Supply Agreement, § 9.4. Omron never provided
19 IceMOS with notice of its intent to terminate the Supply Agreement that meets the § 9.4
20 requirements.

21 **C. Omron's Breaches of its Covenant of Good Faith and Fair Dealing.**

22 39. The design-in process for IceMOS's Super Junction MOSFETs is complex.
23 IceMOS products need to be designed to meet the needs of customers. The process requires
24 designing prototypes, testing samples, ensuring applications work with the MOSFETs, fine
25 tuning the process with the fabrication facility and customer and repeating as necessary to
26 create the final production design. This is a normal process for microelectronic component
27 suppliers and their fabrication facilities.

1 40. IceMOS moved its fabrication work to Omron because of the support Omron
2 initially offered and later promised, which included engineering services and the availability
3 of engineering lots in numbers sufficient to support the research and development of multiple
4 generations of Super Junction MOSFET products. IceMOS would use engineering lots (12
5 wafers) to work on product designs. The Supply Agreement did not place limits on
6 engineering lots that IceMOS could use to design and test its products. Instead, Omron had
7 to supply all engineering lots necessary to create the Super Junction MOSFETs IceMOS was
8 developing.

9 41. In late 2012, after IceMOS had consigned the DRIE etcher to Omron and had
10 commenced work on its GEN1 products, Omron severely limited IceMOS's use of
11 engineering lots to just 3 lots per month. This constituted a 90% reduction in the amount
12 IceMOS needed to prepare its products and forced IceMOS to purchase production lots for
13 use as engineering lots and send specific instructions to Omron for each lot's processing to
14 obtain the testing and product review Omron had previously indicated would cost IceMOS
15 nothing. Despite Omron's decision, which thwarted the purpose of the Supply Agreement,
16 IceMOS had to remain with Omron because there were no alternative fabrication facilities
17 in Japan and IceMOS had committed all available capital resources to fulfilling its
18 obligations under the Supply Agreement.

19 42. Omron thwarted the intent of the parties by reducing its engineering budget to
20 just 10% of its original commitment to IceMOS after IceMOS purchased the DRIE and
21 started Super Junction MOSFET development into the Yasu fabrication facility. This support
22 reduction caused Omron's ongoing inability to obtain adequate yields. It also contributed to
23 numerous process and manufacturing problems that resulted in low-quality products from
24 Omron. Only in 2015 did Omron's production on IceMOS's first generation products
25 (GEN1) reach the minimally acceptable 75% yield threshold to commence high-volume
26 production, which was at least two years *later* than what would have occurred if Omron had
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1 not curtailed its engineering budget and instead had fulfilled its obligations as originally
2 promised.

3 43. These delays caused by Omron's actions that denied IceMOS the fruits of the
4 Supply Agreement cost IceMOS millions of dollars in development time, destroyed or
5 prevented relationships with customers who should have had qualified products years earlier,
6 and severely devalued IceMOS's contemplated IPO because the Super Junction MOSFET
7 sales have been stalled and impeded. Ultimately, Omron severely constrained IceMOS's
8 ability to develop its Super Junction MOSFET business, which cost IceMOS years of product
9 sales prior to Omron's breach and into the future.

10 44. IceMOS has started bringing up its second generation of Super Junction
11 MOSFETs (GEN2) at contract manufacturer Phenitec Semiconductor Corporation
12 (Phenitec). Omron has removed substantially all resources from supporting IceMOS and its
13 GEN2 products, which impairs IceMOS's ability to supply customers while IceMOS
14 transfers its GEN2 production from Omron to Phenitec.

15 45. Omron's failure to support IceMOS's customers and concurrently fulfill its
16 obligations to transfer IceMOS product fabrication to other wafer facilities has caused
17 additional damages. Such failures include Omron's refusal to purchase for itself or assist
18 IceMOS in transferring IceMOS's DRIE etcher, Omron's removal of resources to support
19 IceMOS in transferring its GEN1 production to a new fabricator, Omron's denying IceMOS
20 the ability to continue design-in work for GEN1 customers during the transition of
21 fabrication services from Omron to a new wafer fabrication, Omron's denying IceMOS the
22 ability to complete GEN2 product development during the Supply Agreement term, Omron's
23 refusal to ensure continued supply of fabrication services during IceMOS's transition to a
24 subsequent facility by failing to maintain adequate end-of-life inventory of IceMOS Super
25 Junction MOSFETs, and Omron's failure to assist IceMOS in obtaining alternative
26 fabrication arrangements.

27 **D. Omron's Breaches of the Supply Agreement.**

1 46. On March 6, 2015, Omron met with IceMOS in Phoenix, Arizona and through
2 a non-officer employee *orally* indicated that Omron intended to close its Yasu Fab at the end
3 of March 2017, and therefore that Omron would not accept any new orders from IceMOS
4 after December 31, 2016. Omron made no unequivocal statement that it would not honor the
5 Supply Agreement in some way, only that the Yasu Fab was closing and no orders would be
6 accepted that could not be completed by the end of March.

7 47. IceMOS did not accept the statement from Omron's employee or acknowledge
8 in any way that the Supply Agreement had been or could be terminated without following
9 the Supply Agreement's express terms. IceMOS never accepted any oral termination and
10 never acknowledged that the Supply Agreement was no longer in full force and effect.

11 48. The Supply Agreement's requires a termination notice in written form
12 providing three years notice and full compliance right up to the end date. The Supply
13 Agreement additionally requires that during the last year – while Omron continues to meet
14 its manufacturing, engineering and other support obligations – it *also* must cooperate and
15 support transition to another wafer fabrication facility. Supply Agreement, § 6.2.

16 49. Omron did not deliver written notice to IceMOS during the March 6, 2015
17 meeting. Further, Omron's employee, Yoshitake Ito, recognized that the discussed factory
18 shutdown date did not comply with the three-year notice requirement in the Supply
19 Agreement, even if Omron had provided notice in compliance with the Supply Agreement.

20 50. The March 6, 2015 meeting discussions of a potential Yasu Fab shutdown did
21 not constitute proper notice of early termination because the intended shut down date was
22 March 6, 2017, less than three years from the date of the meeting.

23 51. The March 6, 2015 meeting further did not constitute proper notice of early
24 termination because the notice of termination was not in writing and delivered personally or
25 via facsimile or via registered or certified mail.

1 52. The March 6, 2015 meeting further did not constitute proper notice of early
2 termination because the notice of termination was not communicated by an officer, director
3 or other person with any authority to terminate the Supply Agreement.

4 53. Omron confirmed its own failure to comply with the notice requirements for
5 early termination during a meeting between Omron and IceMOS on December 9, 2015.
6 Omron's meeting minutes, which Mr. Ito sent by email to IceMOS president Sam Anderson,
7 stated:

8 IceMOS [sic] will request Omron to change payment terms for
9 the inventory build because Omron terminate [sic] one year
10 advanced, Omron officially informed IceMOS of the
11 termination in Mar. 2015. Though supply agreement shows at
12 least three years required prior to termination [sic], Omron
13 stated to terminate on Mar. 31, 2017. It's not three years but
14 two years.

15 54. A true and correct copy of said meeting minutes is attached hereto as "Exhibit
16 2" and is incorporated by reference as if fully set forth herein. Thus, Omron has
17 acknowledged that its faulty effort at termination is, even if accepted as a termination, in
18 breach of the Supply Agreement. The meeting minutes also do not constitute proper notice
19 of termination because Omron did not furnish them as required by the terms of the Supply
20 Agreement.

21 55. At both the March 6, 2015 meeting and the December 9, 2015 meeting, Omron
22 falsely represented its intent to fully support IceMOS's Super Junction MOSFETs
23 throughout the "termination period" that Omron had proposed but for which it had not issued
24 written notice. Such support has not occurred. The promises of uninterrupted service and
25 support until March 2017 were made to induce IceMOS to accept an early termination based
26 upon assurances the transition would be handled in a way that would prevent any additional
27 harm to IceMOS. Omron knew IceMOS had no other viable options.

28 56. As of the date of the Original Complaint in this matter, Omron had not
provided proper written notice to IceMOS sufficient to trigger the early termination provision

1 of the Supply Agreement. IceMOS has never accepted the oral termination as proper. This
2 is a material breach of the Supply Agreement.

3 57. Omron has further breached the Supply Agreement by actions and inaction
4 other than its breach of the early termination provision.

5 58. First, Omron has failed to ship one or more IceMOS orders. The Supply
6 Agreement requires lead time of no more than 10 weeks for products with fewer than 15
7 photo layers. Supply Agreement § 4.11. A shipment scheduled to ship on August 5, 2016,
8 which had a lead time of 10 weeks, did not ship until October 14, 2016. The delay occurred
9 because Omron failed to exercise proper process control and had to replace a failed process
10 run. IceMOS lost the customer due to Omron's fabrication failure and sought to return the
11 late product because the customer had switched to an IceMOS competitor. Omron did not
12 credit IceMOS for the failed process run and instead claimed an outstanding invoice for the
13 rejected product.

14 59. Second, Omron failed to ensure continuous uninterrupted supply despite § 4.15
15 of the Supply Agreement and its Exhibit H.

16 60. Third, Omron has rejected the return of unusable wafers rejected by IceMOS.

17 61. Fourth, Omron has refused to accept new purchase orders from IceMOS, in
18 violation of, *inter alia*, §§ 2.0, 4.15 and 6.2 of the Supply Agreement.

19 62. Fifth, Omron has refused to effectuate a sufficient inventory build to service
20 IceMOS during the transition of fabrication services from Omron's Yasu Fab to a subsequent
21 fabrication facility in violation of § 6.2 of the Supply Agreement.

22 63. Since meeting with Omron and learning of Omron's intent to terminate the
23 Supply Agreement, IceMOS has maintained that Omron is not permitted to terminate the
24 Supply Agreement and must continue to support the design, development, and manufacture
25 of IceMOS's Super Junction MOSFETs for at least three years after proper termination
26 notice.

1 64. Nonetheless, in a good faith endeavor to minimize/mitigate any potential
2 damages, and in reliance upon Omron's representations regarding ongoing support during
3 the termination period, IceMOS has negotiated with Omron to resolve the termination issue
4 and has attempted to find alternative facilities to meet its manufacturing demands.

5 65. Given the term of the Supply Agreement and the nature of semiconductor
6 fabrication, IceMOS developed the manufacturing processes for its Super Junction
7 MOSFETs specifically for Omron's wafer manufacturing facility and equipment.

8 66. Despite its best efforts, IceMOS has been unable to identify a comparable
9 manufacturing facility with adequate supply capability or capacity that will not cause
10 substantial delay, costs, and further loss to IceMOS.

11 67. Additionally, IceMOS has learned that the DRIE etcher that it purchased at
12 Omron's insistence and consigned to Omron's facility cannot be transferred and supported
13 outside of Japan, severely limiting IceMOS's options for alternative manufacturers without
14 the substantial loss of the millions of dollars invested in the purchase and installation of the
15 DRIE etcher.

16 68. Recognizing its failure to comply with the three-year notice period or its
17 obligations to continue to fully support IceMOS during a transition, Omron has since shifted
18 its intended termination date to March 6, 2018, which is still fewer than three years from the
19 first possible written notice date.

20 69. Such shift also violates the Supply Agreement because the March 6, 2018 date
21 Omron decided upon is less than three years from the time Omron indicated its intent to
22 terminate on that date.

23 70. The March 6, 2018 date for termination is in further violation of the Supply
24 Agreement because Omron has not provided IceMOS with notice in writing and delivered
25 personally or via facsimile or via certified or registered mail.

26 71. Nonetheless, Omron now maintains an intent to terminate the Supply
27 Agreement as of March 6, 2018. But Omron has provided no assurances to IceMOS that it
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1 will fully support new product development with engineering lots or provide the necessary
2 level of engineering support.

3 72. Despite its covenant to fully resource the development of IceMOS's Super
4 Junction MOSFETs, no later than early 2014, Omron began to redirect engineering resources
5 from IceMOS's development activities to Omron's internal business activities. In so doing,
6 Omron failed to ensure that it could continue to supply 3500 wafers/month as required by
7 the Supply Agreement.

8 73. Omron's reduction of support for IceMOS has been ongoing and has worsened
9 from 2015 to 2016, causing disruption and delays in the development and manufacture of
10 IceMOS's Super Junction MOSFETs and its ability to meet customer demands. Such
11 disruption and delays have detrimentally impacted IceMOS's existing and prospective
12 business relationships by preventing IceMOS from developing its products, selling those
13 products into the market, and timely delivering products to existing customers.

14 74. Additionally, Omron has recently taken the position that the Supply
15 Agreement does not require it to fully support IceMOS's Super Junction MOSFETs for three
16 years, including one year of concurrent transfer support, but rather requires only two years
17 of product support and one year of transfer support, which conflicts with Omron's duty to
18 ensure uninterrupted supply in § 4.15 of the Supply Agreement.

19 75. Omron's position has no merit. Under Omron's interpretation, IceMOS would
20 have agreed to a termination that would leave IceMOS with no ability to service its customers
21 for a full year. IceMOS made no such agreement because that would kill the company.
22 Because IceMOS Super Junction MOSFETs must be "designed in" to customer products,
23 which products have a multi-year life cycle, a customer decision to include IceMOS Super
24 Junction MOSFETs in its products in a device means IceMOS must commit to the customer
25 that it can continuously supply the devices for the expected life of the products in which they
26 are used. This is the nature of the microelectronics industry, and Omron had full knowledge
27 of the life cycle and design-in processes when it courted IceMOS in 2007 and 2008, and
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1 when it entered the Supply Agreement in 2011. Omron's claim that the Supply Agreement
2 can be interpreted in that manner demonstrates its bad faith and malicious intent.

3 76. Omron previously represented, in the December 9, 2015 meeting minutes, that
4 it would fully support IceMOS's Super Junction MOSFETs throughout the termination
5 period. That representation was false.

6 77. On or about May 9, 2017, Omron sent a letter to IceMOS indicating that it
7 intends to cease all manufacture of IceMOS's Super Junction MOSFETs by July 2017. A
8 true and correct copy of said letter is attached hereto as "Exhibit 3" and is incorporated by
9 reference as if fully set forth herein.

10 78. IceMOS has advised Omron of the detrimental impact of its efforts to
11 improperly and prematurely terminate the Supply Agreement. Omron's continued efforts and
12 plans to terminate the Supply Agreement have rendered IceMOS's supply chain uncertain
13 and have inhibited IceMOS's ability to effectively and productively conduct its business. No
14 customers will buy IceMOS's products without a qualified manufacturer identified,
15 approved, and committed to manufacturing IceMOS's orders.

16 79. Additionally, IceMOS intends to make an initial public offering ("IPO") in
17 2018 with an expected valuation exceeding \$100,000,000.00, of which Omron is aware.
18 Early termination of the Supply Agreement without proper notice has seriously and
19 detrimentally affected IceMOS's ability to make its intended IPO in 2018 and/or will
20 negatively impact the valuation thereof.

21 80. Omron's past failures to satisfy its obligations under the Supply Agreement,
22 its failure to provide proper notice of its intent to terminate the Supply Agreement, and its
23 ongoing efforts to terminate the Supply Agreement early and without proper support for
24 IceMOS's products have caused, and will continue to cause, ongoing harm to IceMOS,
25 including but not limited to, lost business opportunities, lost business reputation, and lost
26 business valuation, for which IceMOS seeks redress, as follows:

27 IV. CAUSES OF ACTION

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1 81. Based on the above facts, IceMOS brings this suit for the following causes of
2 action: (i) breach of contract; (ii) breach of the implied duty of good faith and fair dealing;
3 (iii) promissory estoppel, in the alternative; and (iv) fraud.

4 **A. COUNT I: BREACH OF CONTRACT**

5 82. IceMOS adopts and incorporates by reference all preceding paragraphs as if
6 fully set forth herein.

7 83. The Supply Agreement is a valid and enforceable contract for breach of which
8 IceMOS is a proper party to sue.

9 84. At all relevant times, IceMOS fully performed, tendered performance of,
10 and/or was excused from performing its contractual obligations under the Supply Agreement.

11 85. IceMOS has invested millions of dollars in the performance of its contractual
12 obligations under the Supply Agreement, including but not limited to, purchasing the DRIE
13 etcher, purchasing numerous mask sets and silicon wafers for development and production,
14 and hiring a dedicated team of Japanese engineers to work with Omron to facilitate the
15 development and manufacturing of IceMOS's Super Junction MOSFETs.

16 86. Omron has engaged in multiple breaches of the Supply Agreement, including
17 but not limited to, failing and/or refusing to "fully resource the development of all
18 generations of Super Junction MOSFETs;" failing and/or refusing to "share equally in the
19 production mask costs (initial sets) applicable to the products;" attempting to improperly
20 terminate the Supply Agreement without proper notice; and repudiating its obligations to
21 support development and manufacture IceMOS's Super Junction MOSFETs throughout the
22 three-year termination period.

23 87. Omron's breaches of the Supply Agreement have caused, and will continue to
24 cause, ongoing harm to IceMOS, including but not limited to, actual damages in the form of
25 increased costs, loss of business due to delay in reaching the market, harm to IceMOS's
26 business reputation due to inability to timely meet customer demands, loss of business
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1 opportunities due to uncertainty of supply, and impairment of IceMOS's valuation in
2 advance of its planned IPO.

3 88. The harm to IceMOS's business reputation, the impairment of its valuation,
4 and the loss of business opportunities—in particular, the harms that have arisen and will arise
5 from Omron's improper termination and repudiation of its obligation to support IceMOS
6 throughout the termination period—are not adequately recompensable by monetary
7 damages. IceMOS does not have an adequate remedy at law to compensate it for such harms.

8 89. The manufacturing processes for IceMOS's Super Junction MOSFETs are
9 unique and were developed specifically for the Yasu Fab.

10 90. Additionally, IceMOS purchased specialized manufacturing equipment at
11 Omron's insistence and consigned such equipment to the Yasu Fab. Such equipment was
12 specifically configured for Omron's facility and cannot be serviced outside of Japan.

13 91. Because of the unique manufacturing processes and specialized equipment,
14 IceMOS cannot avoid the harm to its business reputation and loss of business by transferring
15 manufacturing to another facility in time to avoid the harm.

16 92. IceMOS has attempted in good faith to avoid and mitigate such harm and has
17 been unable to locate a comparable facility with sufficient capacity and qualify it for
18 customers within the time Omron has demanded. IceMOS has stood, and continues to stand,
19 ready, willing, and able to perform its obligations under the Supply Agreement.

20 93. Because of the immeasurable nature of the harm to IceMOS and the unique
21 nature of the supply services under the Supply Agreement, IceMOS seeks specific
22 performance of the Supply Agreement. Specifically, IceMOS seeks to have Omron continue
23 manufacturing and supporting IceMOS's Super Junction MOSFETs until the earlier of either
24 February 28, 2021 or three years after the day proper written notice of termination is
25 delivered in accordance with the Supply Agreement.

26 94. In the alternative, to the extent that the court finds that the harm to IceMOS's
27 business reputation and valuation and the loss of business opportunities are recompensable
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1 by monetary damages, IceMOS seeks recovery of all actual damages suffered by it due to
2 Omron's multiple breaches of the Supply Agreement in an amount to be proven at trial,
3 which amount IceMOS believes exceeds \$25,000,000.00.

4 **B. COUNT II: BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR**
5 **DEALING**

6 95. IceMOS adopts and incorporates by reference all preceding paragraphs as if
7 fully set forth herein.

8 96. In addition to the breaches of contract stated above, Omron has breached its
9 implied duty of good faith and fair dealing.

10 97. The parties agreed that the Supply Agreement "shall be governed by and
11 construed in all respects under the laws of New York, without regard to rules concerning
12 conflicts of laws." Supply Agreement, § 9.2.

13 98. New York law holds that "in every contract there is an implied covenant that
14 neither party shall do anything which will have the effect of destroying or injuring the right
15 of the other party to receive the fruits of the contract, which means that in every contract
16 there exists an implied covenant of good faith and fair dealing."

17 99. The New York covenant of good faith and fair dealing implies in the Supply
18 Agreement all promises that a reasonable person in the promisee's position would justifiably
19 understand were included to ensure the promisee's expectations are not destroyed by the
20 promisor's actions even if such actions are not specifically prohibited by the contract.

21 100. As described in Paragraphs 35-41 above, Omron has taken actions that have
22 prevented IceMOS from receiving the "fruits of the contract." Such actions are separate and
23 distinct from Omron's various breaches of the Supply Agreement.

24 101. Because of the unique manufacturing processes and specialized equipment,
25 IceMOS cannot avoid the harm to its business reputation and loss of business by transferring
26 manufacturing to another facility.

1 102. IceMOS has attempted in good faith to avoid and mitigate such harm and has
2 been unable to locate a comparable facility with sufficient capacity and qualify it for
3 customers within the time Omron has demanded.

4 103. Omron's breaches of its covenant of good faith and fair dealing have damaged
5 IceMOS by raising IceMOS's costs to comply with the Supply Agreement.

6 104. Omron's breaches of its covenant of good faith and fair dealing have damaged
7 IceMOS by harming its customer relations and damaging its goodwill.

8 **C. COUNT III: PROMISSORY ESTOPPEL, IN THE ALTERNATIVE**

9 105. IceMOS adopts and incorporates by reference all preceding paragraphs as if
10 fully set forth herein.

11 106. Alternative to the foregoing cause of action for breach of contract, to the extent
12 the Court finds that the Supply Agreement is unenforceable or that IceMOS is otherwise
13 unable to recover thereunder, IceMOS brings this claim for promissory estoppel, seeking
14 enforcement of Omron's promises.

15 107. Omron made a promise to IceMOS. Specifically, Omron promised to
16 manufacture and support IceMOS's Super Junction MOSFETs for a period of ten years
17 unless earlier terminated upon three years' proper notice and support.

18 108. IceMOS reasonably and substantially relied on this promise to its detriment by
19 specifically tailoring its manufacturing processes to Omron's facility and investing
20 substantial sums to facilitate development and manufacturing of its Super Junction
21 MOSFETs at Omron's facility.

22 109. IceMOS's reliance was reasonably foreseeable to Omron. Omron made the
23 promise as an inducement for IceMOS to make use of Omron's manufacturing services.

24 110. Injustice can only be avoided by enforcing Omron's promise to manufacture
25 and support IceMOS's Super Junction MOSFETs for the promised term.

26 111. Accordingly, IceMOS seeks to enforce Omron's promise by recovery of the
27 damages suffered by IceMOS in reliance on Omron's promise, including but not limited to,
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1 the depreciated value of the DRIE etcher and other equipment specifically purchased and
2 consigned to Omron's wafer manufacture facility in reliance on Omron's promise.

3 **D. COUNT IV: FRAUD**

4 112. IceMOS adopts and incorporates by reference all preceding paragraphs as if
5 fully set forth herein.

6 113. At the March 6, 2015 meeting in Arizona, and again at the December 9, 2015
7 meeting in Japan, Omron's employee, Yoshitake Ito, represented to IceMOS's Sam
8 Anderson that Omron intended to fully support IceMOS's Super Junction MOSFETs. *See,*
9 *e.g.,* Exhibit 2 (including provisions for inventory build through March 2017 and
10 representation that Omron will "do [its] best to support transfer activities and inventory build
11 for Super Junction").

12 114. This representation was material to the negotiations over Omron's attempts to
13 improperly terminate the Supply Agreement.

14 115. This representation was false because Omron has indicated it will not fully
15 support IceMOS's Super Junction MOSFETs through the termination period but will provide
16 only transfer support for one year of the termination period.

17 116. When Omron made the representation, it either knew that it had no intent to
18 fully support IceMOS's Super Junction MOSFETs throughout the termination period or
19 made the representation as a positive assertion with reckless disregard to its truth or falsity.

20 117. Omron made its representation as part of the negotiations over its admittedly
21 improper termination efforts with the intent that IceMOS rely on the representation as the
22 parties sought a business solution to their impasse.

23 118. IceMOS did, in fact, rely on the representation in its decision to attempt to
24 mitigate damages by looking for an alternative manufacturing facility and to work in good
25 faith with Omron despite Omron's improper termination efforts.

26 119. IceMOS did not know, nor did it have reason to know, that Omron's
27 representation was false.

1 120. Omron's fraudulent misrepresentation has caused, and continues to cause,
2 harm to IceMOS by rendering its supply chain uncertain and impairing IceMOS's ability to
3 effectively and profitably conduct business, develop products, qualify production for
4 customers, and service customers, for which IceMOS seeks to recover actual damages in an
5 amount to be proven at trial.

6 **V. REQUEST FOR PRELIMINARY INJUNCTION**

7 121. IceMOS requests that the Court enter a preliminary injunction against Omron
8 enjoining Omron from ceasing to manufacture IceMOS's Super Junction MOSFETs or
9 providing IceMOS less support than Omron provides for its own manufacturing during the
10 pendency of this suit. Good cause exists for such relief in that there is a substantial likelihood
11 that IceMOS will succeed on its claim for breach of contract and will suffer irreparable harm
12 in the absence of an injunction.

13 122. There is a substantial likelihood that IceMOS will succeed on its claim for
14 breach of contract in that Omron has admitted and acknowledged that it did not comply with
15 the three-year notice period. During the December 9, 2015 meeting Omron acknowledged
16 that its attempted notice on March 6, 2015 was less than three years prior to the termination
17 date. Exhibit 2, p. 1.

18 123. Further, Omron has never provided IceMOS with written notice of early
19 termination that conforms to the notice requirements set forth in the Supply Agreement.

20 124. In the absence of an injunction, IceMOS is substantially likely to suffer
21 irreparable harm. The loss of its manufacturer would prevent IceMOS from satisfying its
22 commercial obligations, causing IceMOS to lose customers and suffer damage to its business
23 reputation.

24 125. Such harm to its business would not be recompensable by an award of
25 monetary damages.

26 126. Further, such harm outweighs any potential injury to Omron from being
27 enjoined. Requiring Omron to continue manufacturing IceMOS's Super Junction MOSFETs
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1 in accordance with the Supply Agreement that Omron voluntarily entered will not cause
2 Omron irreparable harm comparable to the loss of business reputation, business
3 opportunities, and business valuation faced by IceMOS in the absence of such injunction.

4 127. Finally, the public interest would not be disserved by enjoining Omron as the
5 public has an interest in contracts being enforced and in parties satisfying their contractual
6 obligations. Enjoining Omron to comply with the obligations it voluntarily accepted serves
7 this interest and does not run counter to any other public interest.

8 128. For these reasons, IceMOS requests that the Court enjoin Omron from ceasing
9 to manufacture IceMOS's Super Junction MOSFETs or providing less support to IceMOS
10 than Omron contracted to provide during the pendency of this suit.

11 VI. PRAYER

12 **WHEREFORE, PREMISES CONSIDERED,** IceMOS prays that the Court enter
13 judgment against Omron for breach of contract, breach of the implied covenant of good faith
14 and fair dealing, and fraud, awarding IceMOS its actual damages arising from Omron's
15 fraudulent misrepresentation, punitive damages for Omron's intentional fraud, and enjoining
16 Omron from ceasing to manufacture IceMOS's Super Junction MOSFETs and from
17 providing less support for IceMOS's Super Junction MOSFETS than Omron provides for its
18 own products until the earlier of either February 28, 2021 or three years after the day proper
19 notice of termination is delivered in accordance with the Supply Agreement. To the extent
20 that the Court finds that the harms arising from Omron's breach of contract and breach of
21 implied covenant are recompensable by monetary damages, IceMOS prays that the Court
22 award actual damages for its breach of contract claim and for its breach of implied covenant
23 claim. In the alternative, to the extent that the Court finds the Supply Agreement is
24 unenforceable or that IceMOS is otherwise unable to recover thereunder, IceMOS prays that
25 the Court enter judgment against Omron for promissory estoppel and award IceMOS its
26 actual damages arising from its reliance on Omron's promises. IceMOS prays for such
27 further relief, at law or in equity, to which it may show itself to be entitled.

VII. DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), IceMOS hereby demands a trial by jury on all issues triable to a jury.

Dated: August 28, 2017

Respectfully submitted,

/s/ Robert D. Atkins/

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CERTIFICATE OF SERVICE

X

I hereby certify that on August 28, 2017, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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